IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 9062 of 2005

Between:

S. Kusuma, D/o. Satyam
Warangal, Warangal District.

..... PETITIONER

AND

1 The District Medical And Health Officer, Warangal District.
2 The District Collector, Warangal, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction in the nature of Mandamus or otherwise declaring the action of the respondents in not appointing the petitioner as Multipurpose Health Assistant, including Multi-purpose Health Assistant (Female) in terms of G.O.Ms.No. 418 Health, Medical, Family Welfare Department dt. 29-10-96, as arbitrary, illegal and unconstitutional violating Art. 14, 16 and 21 of the Constitution of India and set aside the orders of the Hon'ble Tribunal in O.A.No. 3213/98 dt.27.11.98 and issue consequential directions, directing the respondents to forthwith consider and appoint the petitioner as Multipurpose Health Assistant, including Multipurpose Health Assistant (Female) in terms of G.O.Ms.No. 418 Health, Medical Family Welfare Department dt. 29-10-96, in the interest of justice as otherwise the petitioner will be put to irreparable loss and injury.

Counsel for the Petitioner: MR.P.V.KRISHNAIAH

Counsel for the Respondents: GP FOR SERVICES I

The Court at the stage of admission made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed assailing the order, dated 27.11.1998, passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.3213 of 1998.

2. The matter relates to appointment to the post of Multipurpose Health Assistant (Female). The Commissioner of Family Welfare issued Notification, dated 19.10.1995, calling applications for the appointment to the post of Multipurpose Health Assistant (Female). The petitioner accordingly, filed an application and participated in the selection process. The petitioner belongs to BC-D category. However, she was not appointed, therefore, she filed O.A. seeking appropriate directions.

3. The learned Tribunal after considering the matter, rejected the case of the petitioner on the ground that there are no vacancies available and that the action of the District Collector cannot be found fault with for not filling all the vacancies. Against the said order, the present Writ Petition has been filed.

4. Learned counsel for the petitioner submits that as per G.O.Ms.No.388, Health, Medical and Family Welfare Department, dated 12.10.1995, the authorities are required to maintain waiting list. Clause 14 of the said Government Order shows that the number of candidates selected shall be equal to the number of posts notified. A waiting list not exceeding 20% of the numbers of vacancies may be prepared which will be valid till 31st March of the succeeding year. The candidates who are in the waiting list shall not have any right or claim for appointment. He also submits that the waiting list has not been prepared as required in the said Government Order, and in fact, 60 vacancies were notified and all of them were not filled up on account of non-joining of some members. He also submits that subsequently, the Government

issued G.O.Ms.No.418, Health, Medical and Family Welfare Department, dated 29.10.1996, in which it has directed that the vacancies which arose between 01.01.996 and 30.11.1996 shall also be filled up by drawing eligible candidates from the waiting lists of the selections made in the year 1995, but even this direction was also not followed. Thus, the learned counsel would submit that the Tribunal has not considered the matter in proper perspective and gave more weightage to the action of the Collector, who did not maintain the waiting list nor did he implement the orders of the Government in G.O.Ms.No.418. Thus, he submits that the order of the Tribunal is illegal and not sustainable in law.

5. On the other hand, learned Government Pleader submits that there are no vacancies so as to consider the case of the petitioner, as all the vacancies, which were remained unfilled in the 1995 recruitment were filled up in later recruitment. Thus, the order of the Tribunal cannot be said to be illegal and contrary to law.

6. We have heard the learned counsel for the petitioner and learned Government Pleader.

7. It is not in dispute that 60 vacancies were notified by the Commissioner of Family Welfare vide notification No.465/FW.E1/95, dated 19.10.1995. It is also on record that the petitioner got 82 marks whereas the last candidate who was selected in the BC-D category got 83 marks.

8. Be that as it may, the selection board did not maintain 20% waiting list as required under Clause 14 of the G.O.Ms.No.388, dated 12.10.1995, which is extracted below:

> "**14. SELECTION LIST AND WAITING LIST.**
>
> The number of candidates selected shall be equal to the number of posts notified. A waiting list not exceeding 20% of the number of posts may be prepared which will be valid till 31st March of the succeeding year. The candidates who are in the waiting list shall not have any right/claim for appointment."

9. The reason for giving direction in G.O.Ms.No.418 would itself indicate that there are some vacancies which could not be filled up in 1995 recruitment, and for this purpose, to enable the selected candidates to get appointment, the Government has clearly directed that the vacancies which arose from January, 1996 to 30.11.1996 shall also be filled up. Even that was also not considered by the Tribunal so as to meet the requirement of the direction given by the Government in G.O.Ms.No.418. The Tribunal only found favour with the action taken by the Collector who has virtually violated the orders of the Government both in G.O.Ms.Nos.388 and 418. Such an action cannot be said to be validly recognized under law when it contravened the directions contained in the Orders issued by the Government from time to time.

10. Be that as it may. Had the 20% waiting list has been prepared, there could not have been further recruitment to the extent of the candidates who were in the 20% waiting list. But, the authorities appeared to have even violated the procedure and filled up the vacancies in the subsequent recruitment, by which the petitioner has been denied her right to be considered for employment on account of contraventions of the instructions issued by the authorities. The petitioner should not be allowed to suffer the benefit of employment. Had the 20% waiting list has been maintained or had the authorities implemented the order of the Government in G.O.Ms.No.418, the petitioner could have definitely been appointed for the post of Multipurpose Health Assistant (Female).

11. Under those circumstances, we find that the order of the Tribunal is not sustainable in law and on the other hand we find that the petitioner has been unduly denied the appointment to the post for which she got 82 percentage of marks.

12. Now the learned Government Pleader submits that there are no vacancies to accommodate the petitioner.

13. The said contention cannot be accepted inasmuch as when the authorities have violated the directives of the Government in respect of selection as well as further filing up of the post under G.O.Ms.No.418, it is incumbent on the part of the

Government to accommodate and appoint the petitioner.

14. Under those circumstances, the Writ Petition is allowed, and the order of the Tribunal is set aside. The respondents are directed to appoint the petitioner as Multipurpose Health Assistant forthwith, within a period of four weeks from the date of receipt of a copy of this order. If there are no vacancies, the petitioner shall be appointed and adjusted in the future vacancy that may arise for filing up by direct recruitment.

15. With the above direction, the Writ Petition is accordingly, allowed. No costs.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 21.04.2005

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To

1 The District Medical And Health Officer, Warangal District.
2 The District Collector, Warangal, Warangal District.

3 2 CCs to the GP for Services-I, High Court buildings, Hyderabad (OUT)

4 2 CD copies